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Supreme Court, U.S.
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Nos. 02-125 and 02-425

In The

Supreme Court of the United States

MICHAEL B. KING,

Appellant,

v.

STATE OF GEORGIA,

Appellee.

MICHAEL B. KING,

Appellant,

v.

STATE OF GEORGIA,

Appellee.

On Appeal From The United States District Court For The District Of Columbia

REPLY TO MOTIONS TO DISMISS

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10 pp

QUESTIONS PRESENTED

A. Whether the district court erred in denying appellant's motions to intervene as a matter of right in the declaratory action to determine whether the State of Georgia's senate redistricting map unlawfully diluted the voting strength of African-Americans in violation of Section 5 of the 1965 Voting Rights Act.

B. Whether the district court erred in denying appellant's motion to stay the Section 5 declaratory proceedings pending a decision on appellant's renewed motion for leave to intervene.

C. Whether the district court erred in entering a decision on the merits of the State of Georgia's Section 5 declaratory action after notice of appeal of the order, denying the renewed motion to intervene, was filed.

D. Whether the district court erred in considering the State of Georgia's revised senate district map under Section 5 of the 1965 Voting Rights Act after notices of appeal of the orders and judgment, denying the renewed motion for leave to intervene and motion for reconsideration, were filed.

E. Whether the district court erred in holding that the State of Georgia's revised senate redistricting map did not dilute the voting strength of African-Americans in violation of Section 5 of the 1965 Voting Rights Act.

F. Whether the district court erred in denying appellant's motion to intervene for purposes of appeal.

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Rule 24(a)(2) 1

A. The United States Supreme Court Has Jurisdiction Over The Appeals Of The Court Orders Denying Appellant's Motions For Leave To Intervene.

Rule 24(a)(2) of the Federal Rules of Civil Procedure provides in pertinent part:

> Upon timely intervention anyone shall be permitted to intervene in an action . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the deposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Appellant has a vital interest in the appellee's senate redistricting plan. Appellant is an African-American citizen and registered voter in Clayton County, Georgia. He was moved from Georgia Senate District 44 to District 34 under the redistricting plan that is the subject of this appeal. Appellant was the only candidate the white incumbent senator faced in the 1998 and 2000 elections. Appellant received 45% of the votes in each primary election when African-American registered voters were less than 50% in Senate District 44. In 2002, African-American registered voters increased in Senate District 44 to about 60%. The appellee's 2001 and 2002 senate redistricting map reduced the percentage of African-American registered voters to less than 50%. The senate redistricting map diluted the voting strength of African-Americans in District 44 and prevented them from electing appellant as the candidate of choice.

Appellant clearly had a vital interest in the appellee's senate redistricting map. The adoption of the redistricting map by the district court affected appellant's constitutional and statutory rights to represent the African-American majority as state senator in District 44. *See Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). In *Chiles v. Thornburgh*, the Eleventh Circuit stated:

> [I]n cases challenging various statutory schemes as unconstitutional . . . the courts have recognized that the interests of those who are governed by those schemes are sufficient to support intervention.

Id. at 865 F.2d 1197, 1214 (11th Cir. 1989).

The disposition of the action in the district court impeded appellant's ability to protect his interest against a senate redistricting map that unlawfully diluted the voting strength of African-Americans in District 44. The revised map will determine the extent and nature of African-American representation in Senate District 44 for the next decade. Appellant may be foreclosed in his Section 2 action from challenging the revised map if the district court's judgment is affirmed. The litigation disadvantage appellant faced in his Section 2 action supported intervention as a matter of right. Id.

Appellant's interests were not protected by any of the existing parties. No party in the district court challenged the revised senate map on grounds that it unlawfully diluted the voting strength of African-Americans in Senate District 44. Also, the defendants and intervenors in the district court decided not to appeal the district court's June 3, 2002 Order and Judgment, granting appellee's

request for a declaratory judgment concerning the revised senate map.

Intervention was necessary to adequately protect appellant's interests in the Section 5 action where the burden of proof was on the appellee to show that its revised senate map did not unlawfully dilute the voting strength of African-Americans in Senate District 44.

Appellant filed his timely motion for leave to intervene in the pre-judgment proceedings on December 19, 2001 following the filing of the appellee's complaint for declaratory judgment on October 10, 2001. He later ~~timely~~ filed two renewed motions for leave to intervene prior to the final judgment and one post-judgment motion to intervene for purposes of appeal. The district court denied appellant's first motion to intervene because the court could not determine from the record whether appellant's interests were protected by the defendants. A timely hearing could have resolved any misunderstanding the district court had concerning whether appellant's interests were protected by the defendants. The court chose not to hold such hearing. Appellant filed his first renewed motion to intervene On January 17, 2002 after learning the defendant did not oppose the revised Senate District 44. On January 30, 2002, the district court denied the renewed motion to intervene because appellant did not attend the January 25, 2002 pretrial conference. Prior to the pretrial conference, appellant was not a party to the declaratory action and he was not notified by court to attend the pretrial conference as a non-party. Appellant filed a second renewed motion to intervene and notice of appeal on February 7, 2002 prior to the completion of the evidentiary hearing. The district court completed the hearing without allowing appellant to intervene and

entered an order denying the renewed motion on April 5, 2002. In this order, the court denied the appellee's request for a declaratory judgment concerning its senate redistricting map. Appellant filed his appeal of the order denying his renewed motion to intervene on April 17, 2002. On June 3, 2002, the district court amended its April 5, 2002 judgment and granted the appellee's request for a declaratory judgment concerning the revised senate redistricting map. Appellant filed his third motion to intervene and third notice of appeal.

The timeliness standard concerns not only the chronology leading up to the motions for intervention but also "all the circumstances," including:

> 1. The length of time during which the would-be intervenor actually knew or reasonably should have known of his interest in the case before he petitioned for leave to intervene . . . 2. The extent of the prejudice that the existing parties to the litigation may suffer as a result of the would-be intervenor's failure to apply for intervention as soon as he actually knew or reasonably should have known of his interest in the case . . . 3. The extent of the prejudice that the would-be intervenor may suffer if his petition for leave to intervene is denied . . . [and] 4. The existence of unusual circumstances militating either for or against a determination that the application is timely.

Meek v. Metropolitan Dade County, Fla., 985 F.2d 1471 (11th Cir. 1993) (quoting *Stallworth v. Monsanto,* 558 F.2d 257, 263-66, 5th Cir. 1977).

Absolute measures of timeliness, such as how far the litigation has progressed when intervention is sought and

the amount of time that has elapsed since the institution of the action is not to be relied upon by the district court. Id. at 1479. The mere delay in determining the rights of existing parties is not a relevant consideration in deciding whether a motion to intervene was timely filed. Id. The prejudice that is relevant to the question of timeliness is that which would result from the would-be intervenor's failure to request intervention as soon as he knew or reasonably should have known about his interest in the action. Id.

The district court erroneously failed to apply the above standard to appellant's motions for leave to intervene. Measured by such standard, the motions to intervene would be considered timely. The district court abused its legal discretion in denying appellant's first renewed motion to intervene because he did not attend, without proper notice, a pretrial conference for the parties on January 25, 2002. The court also abused its discretion in denying appellant's second renewed motion to intervene because the motion was filed the day before the evidentiary hearing was completed. The court further abused its discretion in denying appellant's third renewed motion to intervene because the appellee had filed notices of appeal. The district court's actions were contrary to established law concerning motions to intervene.

Appellant further maintains that his first notice of appeal divested the district court of jurisdiction to further consider the appellee's declaratory complaint after February 7, 2002, and the April 5, 2002 judgment was a nullity that could not be amended on June 3, 2002. The filing of a notice of appeal "confers jurisdiction on the court of appeals and divests the district court of control over those aspects of the case involved in the appeal". *Griggs v.*

Provident Consumer Discount Co., 459 U.S. 56, 58 (1982). Because appellant's appeal challenged the legal validity of the appellee's revised senate map in addition to his right to intervene, the district court was divested of jurisdiction to determine whether the map unlawfully diluted the voting strength of African-Americans in Senate District 44.

CONCLUSION

Accordingly, for the above reasons, appellant respectfully urges this Court to deny the motions to dismiss or affirm and hear this appeal on the the merits.

This 30th day of December, 2002.

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